



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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**18 VAC 50-22 – Board of Contractors Regulations**  
**Department of Professional and Occupational Regulation**  
May 8, 2009

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### **Summary of the Proposed Amendments to Regulation**

The Board of Contractors (Board) proposes to amend its regulations to account for several statutory changes, to clarify current requirements and to respond to changes in affected industries. Specifically, the Board proposes to:

- Separate the current manufactured/modular home contractor specialty license into two licenses: one for manufactured home contractors and one for industrial building (modular home) contractors,
- Require applicants for a specialty classifications to pass a qualifying exam,
- Increase the net worth or equity that firms must prove to qualify for licensure as Class B or Class A contractors,
- Amend the requirements for licensure by reciprocity to allow individuals to gain licensure in Virginia if they were originally licensed in a state with licensure eligibility criteria that are substantially equivalent to Virginia's and
- Require legal business entities that dissolve and reform under another business name to return their old, invalid, license to the Board within 30 days of the change.

### **Result of Analysis**

The benefits likely exceed the costs for several of these proposed changes. There is insufficient data to determine if the benefits will outweigh the costs for several other proposed changes.

## Estimated Economic Impact

Current regulations allow for one specialty services license that covers both manufactured home contractors and modular home contractors. The Board proposes to split this specialty license into its component parts so that contractors may choose to be licensed in manufactured home contracting or in industrial building contracting or in both. The Board is proposing this change as a response to new standards set by the Department of Housing and Urban Development (HUD) for those who install manufactured homes. These new standards add costs that the Board feels would be overly burdensome for individuals who only install and remove modular home.

This change will likely benefit contractors who install (or remove) modular homes and do not work with manufactured housing as they will not have to adhere to the additional standards set by HUD. Individuals who install both modular and manufactured housing will incur some extra costs because they will now need to obtain two specialty designations rather than one. These costs under current regulations would be minimal and would mainly be accrued for the time the contractor spends meeting Board paperwork requirements. Once these proposed regulations are promulgated, these costs will be higher because the Board proposes to require that all applicants for specialty designations take a Board approved exam. Although the costs associated with having to take two exams under this new requirement are not negligible, they are still likely smaller than costs that would be incurred should all modular home and manufactured home contractors be forced to meet HUD requirements for manufactured home installers.

Current regulations only require that contractors pass qualifying examinations for nine of the more than 40 specialty designations for which they may apply. The nine specialty designations that currently require contractors to take an exam are:

- 1) Blast/explosives contracting
- 2) Electrical contracting
- 3) Fire sprinkler contracting
- 4) Gas fitting
- 5) HVAC contracting
- 6) Plumbing

- 7) Radon mitigation,
- 8) Water well drilling and
- 9) Elevator/escalator mechanics contracting.

Elevator/escalator mechanics contractors may substitute certification from either the National Elevator Industry Education Program (NEIEP) or the National Association of Elevator Contractors (NAEC) for the Board required exam (and education). Additionally, three specialty designations require contractors to meet the qualifying criteria of another state agency, federal regulatory agency or national certifying organization. Contractors who are seeking to obtain blast/explosives designation must get the Department of Fire Programs' explosive use certification. Contractors who want the fire sprinkler designation must get National Institute for Certification in Engineering Technology's (NICET) sprinkler III certification. Contractors who are applying for a radon mitigation specialty designation need to get either federal Environmental Protection Agency (EPA) or state Department of Environmental Quality (DEQ) accepted radon certification.

The Department of Professional and Occupational Regulation (DPOR) reports that the Board has, in the past six years, adjudicated approximately 2400 disciplinary cases involving competency issues. These cases have cost the Board a total of almost \$7 million over that time span. To help limit the number of competency issues that will have to be dealt with in the future, the Board proposes to require a qualifying examination for all specialty designations. This change will only affect contractors who apply for specialty designation after the effective date of these proposed regulations. DPOR reports that there are approximately 8,000 applicants for licensure each year and that the vast majority of these would be applying for designation in areas that would be newly required to pass a qualifying examination. DPOR further reports that the fee to take qualifying examinations will range between \$40 and \$60.

Applicants for specialty examination will incur explicit costs that include the exam fee plus any costs for traveling to where the examination will be given. They will also incur implicit opportunity costs for the time they spend studying for and taking the qualifying examination. Assuming that 7,000 of the 8,000 new applicants each year would not be required to take an exam under current regulations, but would be required to under the proposed regulations, and assuming applicants incur total costs (explicit + implicit costs) of approximately \$100 per exam

taken, the total costs associated with new examinations over a six year period would be approximately \$4.2 million. Comparing this rough approximation to the ~\$7 million cost of adjudicating competency cases over the last six years, benefits accrued to the Board for this proposed change would only outweigh costs if over half of competency issues severe enough to warrant a Board hearing were eliminated on account of the required exams. There are other benefits (and costs) associated with this proposed change that may accrue to consumers of contractor services that are harder to even roughly quantify. These individuals would likely benefit from any increase in the average competency of contractors that might happen on account of requiring a qualifying examination. They would also incur costs if the institution of an exam requirement causes the pool of available contractors to shrink and, consequently, increases the cost of those services. There is insufficient data to decide if total benefits will outweigh total costs for this proposed change.

Currently, the Board requires applicants for Class B and Class A contractor licenses to prove that they have at least a set dollar amount of assets as a condition of licensure. Class B licensees currently must be able to show assets worth \$15,000 and Class A licensees must prove assets of \$45,000. These net worth requirements have been in place since before these regulations were first promulgated in 1995. In 2003, the General Assembly increased the maximum per job/per year dollar caps for Class B. The caps for Class B contractors were raised to \$120,000 per job/\$750,000 per year. DPOR reports that the Board has seen a significant increase in the number of disciplinary cases involving violations directly related to the financial stability of involved Class B licensees since this legislative change.

To address this problem, and the fact that construction costs for construction have steadily increased over the last number of years, the Board proposes to increase the assets required of Class B contractors to \$50,000 and the assets required of Class A contractors to \$100,000. These proposed changes will benefit consumers of contractor services in that it will likely decrease the chance of the work they hire going unfinished because their contractors run out of money. The Board also believes that these changes will likely reduce the number of claims on the Board administered recovery fund: currently 22% of claims to this fund arise from work done (or not done, as the case may be) by Class B contractors and 37.7% of claims involve Class A contractors. To the extent that Class B and A contractors are finishing work in a shoddy manner, or not finishing it at all, specifically because they lack the assets to do so, these

regulatory changes may help decrease the 59.7% of claims made against these entities. These proposed changes will likely cause some contractors to change the type of license they apply for or go out of business altogether. Some Class B contractors, for instance, will likely not have assets sufficient to meet the requirements of the proposed regulations and will have to apply for a Class C contractor license or give up their license altogether. The deleterious effects of these proposed changes for contractors will likely be worse now, given that many businesses are likely drawing down assets to meet current expense needs, than they would be if implemented when housing markets weren't so depressed. That said, there is insufficient data to accurately gauge whether the benefits of these proposed changes for consumers will outweigh the costs for contractors.

Current regulations allow contractors from other states to gain licensure without meeting the requirements for initial licensure by examination so long as the states where they are licensed have reciprocal agreements with Virginia. The Board proposes to amend the section that deals with licensure by reciprocity to allow contractors who come from states that do not have reciprocal agreements with Virginia, but that do have licensure eligibility criteria that are substantially equivalent to Virginia's, to be licensed by reciprocity. This proposed change will likely not have any costs attached since all affected contractors will substantially meet Virginia's standards (which should ensure that these individuals are at least as minimally competent as other Board licensees). Affected contractors will benefit from being able to gain Virginia licensure without having to meet the more expensive and time consuming criteria for initial licensure by examination. The public may benefit if this proposed change increases the pool of contractors in the state from which they may hire.

Current regulations require legal business entity licensees that dissolve and reform under a new business name to reapply for licensure under the new name within 30 days of the change. DPOR reports, however, that some licensees are confused about this rule and either continue using the old license (even though they have the new license) or think they have to continue renewing the old license. To address these misunderstandings, the Board proposes to add language to these regulations that explicitly states that the old license is void and needs to be returned to the Board within 30 days. Affected licensees will incur the cost of the postage and the envelope that they would need to use to mail their old license back to the Board. These costs

will very likely be outweighed by the money saved by not renewing void licenses as well as benefit of clarity that this change brings to the regulations.

### **Businesses and Entities Affected**

DPOR reports that the Board currently licenses approximately 68,000 entities and receives approximately 8,000 new applications for licensure each year. All of these entities, as well as the public who hires their services, will be affected by the proposed regulations.

### **Localities Particularly Affected**

No locality will be particularly affected by this proposed regulatory action.

### **Projected Impact on Employment**

To the extent that these proposed regulations lead to a net decrease in the number of contractors licensed in the Commonwealth, they will likely decrease total employment in contracting fields.

### **Effects on the Use and Value of Private Property**

Any contractors who end up reducing the Class of license they apply for, or go out of business altogether, on account of changes in these proposed regulations will see the value of their businesses reduced or completely eliminated.

### **Small Businesses: Costs and Other Effects**

Small business contractors in the Commonwealth will incur costs for new examination requirements in these proposed regulations and will have to prove greater net worth in order to qualify for licensure as Class B or Class A contractors. Most contractors that are licensed by the Board likely qualify as small businesses.

### **Small Businesses: Alternative Method that Minimizes Adverse Impact**

The Board may wish to reexamine whether the costs of requiring examinations for all specialty designations are worth incurring and whether they could get most of the expected benefit by requiring exams for some but not all of the affected specialty designations.

### **Real Estate Development Costs**

This regulatory action will likely increase building costs in the Commonwealth.

## Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.